IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3316 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

YAGNESHKUMAR HARISHBHAI PATHAK

Versus

THE ADMINISTRATOR

Appearance:

MR UI VYAS for Petitioner

MR YV SHAH for Respondent No. 1, 2

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 18/01/2001

ORAL JUDGEMENT

1. In this petition which is filed under Article 226 of the Constitution, the petitioner who was appointed as a Wireman on daily wage basis with the respondent Nagarpalika on February 1, 1992 and subsequently confirmed by order dated August 17, 1993, Annexure A to

the petition, vide office order No. 703/92-93, apprehends that since the Nagar Panchayat has been superseded on March 15, 1993 and Administrator was appointed, he wants to put an end to the services of the employees of the Nagar Panchayat on the pretext that the appointments of the employees of the Nagar Panchayat are irregular appointments, without giving notice as well as giving opportunity of being heard to them, in an arbitrary manner and in violation of Articles 14 and 16 of the Constitution of India, prays to issue a writ of mandamus or a writ in the nature of mandamus or any other writ, order or direction, directing the respondents not to terminate the petitioner from the service as a Wireman of the respondent Nagar Panchayat without issuing notice to him or without giving opportunity of being heard or without following due process of law.

2. The petition was admitted way back on July 28, 1994 by issuing rule and granting interim relief directing status quo to continue till the disposal of the petition and by virtue of the said order the petitioner is continued on the said post.

3. Today when the matter is called out for final hearing, U.I. Vyas, learned advocate for the petitioner and Mr. Y.V. Shah, learned advocate for the respondents, are present.

4. Mr. Shah, learned advocate for the respondents, pointed out that the order dated August 17, 1993 appointing the petitioner as a Wireman on permanent basis was issued by the Sabhapati of the Rajula Nagarpalika and according to law the Sabhapati cannot give appointment without the sanction of the General Board. Therefore, the appointment order of the petitioner itself is a nullity and on the basis of the said order, no relief can be granted to the petitioner.

5. Mr. Vyas, learned advocate for the petitioner, contended that the petitioner simply apprehends that as the Administration is appointed the services of the employees will be terminated without giving opportunity of hearing and without due process of law and the anxiety of the petitioner is to see that the services of the petitioner is not terminated without due process of law and, therefore, necessary orders in that regard may be passed by allowing the petition.

6. Learned advocates for both the parties have brought to the notice of this Court that Rajula Nagar Panchayat has been converted into Rajula Nagarpalika in

the year 1994.

7. I have considered the submissions advanced by the learned counsel for the parties and perused the order giving appointment to the petitioner which is forming part of the petition.

8. There is no manner of doubt that the petitioner was appointed way back on February 1, 1992 as Wireman on daily wage basis and subsequently he was appointed vide order dated August 17, 1993 on permanent basis and the said order was passed by the Sabhapati of the Nagar Panchayat. The petitioner seeks relief only against the termination of his services without due process of law. It is a cardinal principle of service jurisprudence that no permanent employee can be removed from service without due process of law and, therefore, without examining the submissions about the legality of the order canvassed by Mr. Shah, learned advocate for the respondents, this Court is of the opinion that since the petitioner seeks protection against termination of his service without due process of law, the ends of justice would be met by passing order not to terminate the service of the petitioner without due process of law.

9. For the foregoing reasons, the petition succeeds in part and it is accordingly partly allowed. The respondent now Rajula Nagarpalika is directed not to terminate the service of the petitioner without due process of law. Rule is made absolute to the aforesaid extent with no order as to costs. Interim relief stands vacated.

18.1.2001. (A.M. Kapadia, J.)

(karan)